IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8485 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? Yes

5. Whether it is to be circulated to the Civil Judge? No

RATANSINH SODANSINH SISIDIA

Versus

UNION OF INDIA

Appearance:

MR RAVI R TRIPATHI for Petitioner

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 16/01/97

ORAL JUDGEMENT

The challenge in this petition under Article 227 of the Constitution of India is against the order and award passed by the Industrial Tribunal on 13.9.1992 in Reference (ITC) No. 44 of 1991 whereby the petitioner workman is awarded compensation of Rs.50,000/- for dismissal which came to be recorded by Employer the Western Railway, Union of India after holding a domestic

inquiry against the petitioner.

The petitioner was working as a fitter with the respondent-railway. In view of an incident which occurred on 16.12.1986, a departmental inquiry was instituted against the petitioner for serious misconduct , misbehaviour and attempting physical assault on a superior officer.

It was alleged against the petitioner in the domestic inquiry that on 16.12.1986, while he was working as a pipe fitter ,in the morning at about 9 O' clock, he entered into the office of the superior officer Mr.B.L.Kapadia and at that time, other two officers viz. M/s.Keshavlal and Kaushik were present. As per the statement of imputation against the petitioner, he then started shouting loudly and indecently at the officer Mr. Kapadia who was then working as Assistant Mechanical Engineer at Ahmedabad. Subsequently,the petitioner also threatened to strangulate him and even physically attempted to do so until he was prevented and separated from Kapadia by the said officers Keshavlal and Kaushik. Thus, as per the case of the department, the petitioner was guilty of gross misconduct ,misbehaviour and attempting physical attempt on the superior who was a gazetted officer. The respondent-authority appointed Inquiry Officer who upon an inquiry held the petitioner guilty of the said charges. Report of the Inquiry officer was accepted by the Disciplinary Authority and dismissal order came to be recorded against the petitioner on 25.8.1989.

The petitioner initially moved the Central Administrative Tribunal,Ahmedabad bench , but the same was withdrawn as a Reference was filed by the union. Therefore, upon Reference No.44 of 1991, the case came to be decided by a judgment and award dated 30.9.1992 by the Industrial Tribunal whereby the Reference is adjudicated and while maintaining the order of dismissal,however, the Tribunal awarded a sum of Rs. 50,000/- to the petitioner-workman for dismissal which is precisely under challenge in this petition.

Learned advocate Mr. Tripathi for the petitioner raised the following contentions that:

(i) the impugned order of dismissal is passed in the domestic inquiry without issuance of second show cause notice in breach of provisions of Article 311 (2) of the Constitution of India;

(ii) copy of the inquiry report was not given to the petitioner which is fatal;

(iii) officer of the respondent- B.L.Kapadia is not examined;

(iv) the petitioner workman came to be acquitted in the criminal case in connection with the same charge;

(v) the inquiry conducted against the petitioner is illegal and invalid for non-supply of material documents;

(vi) no effective cross-examination was permitted, and

(vii) the finding of the Tribunal that the petitioner is not a protected workman is improper and illegal.

The first contention of the learned advocate Mr.Tripathi that dismissal order of the respondent-authority is vitiated for want of second show cause notice under Article 311 (2) of the Constitution is totally meritless in view of the amendment effected by Forty-second Amendment Act,1976 whereby second opportunity regarding representation at the stage of imposing penalty after conclusion of the inquiry is done away with. It cannot not also be said that want of such opportunity would tantamount to breach of principles of natural justice.The first contention,therefore,must fail.

The second contention is that the inquiry report was not given before passing the impugned order of dismissal and,therefore,it is fatal. The Tribunal has found that the inquiry report was given to the workman . This finding of fact has remained unassailable. Assuming that the inquiry report was furnished only at the time of service of dismissal order, then also, in the present case, it cannot be said to be fatal vitiating the domestic inquiry in view of the decision of the Honourable Supreme court in the case of Union of India vs.Mohmad Ramzan Khan,AIR 1991 SC 471. In the said decision, it is clearly held that the ratio propounded therein shall be prospective and not retrospective. It is an admitted fact that the impugned order of dismissal came to be recorded on 25.8.1989; whereas, the decision rendered in the aforesaid case was on 20.11.1990. Therefore,on both counts- factually as well as legally, the second contention is without any substance and,therefore,it is rejected.

The third contention that the complainant-senior officer B.L.Kapadia is not examined and,therefore, the petitioner

should have been given benefit of doubt is also not acceptable in view of the fact that two other officers viz. Keshavlal and Kaushik in whose presence the unfortunate incident occurred on 16.12.1986 are examined. They are also the best persons to testify . They have supported the case of the department to prove the charges against the petitioner. Non-examination of B.L.Kapadia cannot be said to be fatal. Therefore, the third contention is meritless.

Insofar as contentions Nos.(iv) to (vi) are concerned, they are interconnected and,therefore, they are dealt with simultaneously. These contentions do not affect the merits of the dismissal order recorded by the Industrial Tribunal. Mere fact that the petitioner was acquitted in the criminal case is ipso facto not going counter to the case propounded by the department. In the absence of copy of acquittal order recorded by the criminal court , it would be like jumping into dark, as to what ultimately prompted the court concerned to pass the acquittal order. What were the reasons and what was the basis,i.e. was it on merits or technical ground etc., are not known in the absence of order of criminal court acquitting the delinquent workman, being accused in that case. It is not disputed that nature of inquiry, extent of proof, extent of standard to assess and evaluate the evidence and the yardstick to be applied to both the forums are distinctly different. Nothing has been successfully shown from the record which was produced by the learned counsel Mr.Tripathi in the course of his submissions before this court which would go to show that analysis and appreciation made by the department in support of recording dismissal order is in any way unjust,improper or illegal or that the inquiry is vitiated on account of non-supply of documents. There is nothing on record to even remotely indicate as to what was the nature of document which was required and which was not supplied. Therefore, it cannot be contended that the Tribunal has committed serious error in passing the impugned order. Unless material particulars are placed on record about the documents which were allegedly sought for and demanded and allegedly not supplied,as the record does not reinforce this contention. Therefore, the contention that inquiry is vitiated for non-supply of documents is unsustainable. There is nothing on record which would even also remotely suggest that the workman was prevented from making effective cross-examination . This submission is raised for the first time. Apart from that, nothing has been successfully shown from the copies of record even at admission stage which were submitted by the learned advocate Mr. Tripathi to show that the

inquiry is suffering from the vice of non-observance of the principles of natural justice, like that, not giving an opportunity for effective cross-examination. This submission is also quite meritless and is required to be rejected. Therefore, the aforesaid contentions Nos. (iv), (v) and (vi) are not supportable from the record and, therefore, the said contentions are required to be rejected being totally meritless.

The last contention is that the Tribunal has committed a serious error in holding that the petitioner was not a protected workman. The Tribunal has considered this aspect and there is no reason to discard and reject the finding recorded by the Tribunal. Nothing has been produced on record which would go to show that the petitioner was one of the office bearers of the recognised union at the relevant time which would entitle him protection under Section 33 of the Industrial Disputes Act,1947 (ID Act). In the absence of any factual data or material, it would not be possible to support this contention. Therefore, the impugned order of the Tribunal cannot be said to be suffering from the vice of noncompliance of provisions of Section 33 (3) of the ID Act. It may also be noted that the Tribunal has noted and found that notification that the workman was a protected workman is not produced. A copy of such notification dated 21.8.1989 is now produced at Annexure 'B'. It is issued by the Government of India, Ministry of Labour on 21.8.1989. Annexure 'B' is produced without a copy of list.However, at the time of hearing, a copy of the list showing names of office bearers was submitted by the learned advocate for the petitioner from his record. This exercise at this stage in connection thereto is of no assistance to the petitioner; firstly, it ought to have been produced before the Industrial Tribunal; secondly, such a specific contention could have been raised there and thirdly,in view of the contention of the respondent-authority, Paschim Railway Karmachari Parishad, Dadar, Bombay with its head quarters at Bombay is not recognized by the Western Railway, Union of India. It was the case of the respondent-employer that the petitioner workman is not a protected workman as he was not a member of the union which was recognized by it. There is no plausible and reasonable explanation as to why the concerned notification was not produced before the Tribunal.In case, the contention that the notification was produced is accepted, then in that case, it may be open for the petitioner workman to go for review rather than challenging it by filing a writ petition.

The Tribunal has passed the impugned order exercising its discretion in light of provisions of Section 11-A of the ID Act. In view of the settled proposition of law, it is very clear that Section 11-A confers wider discretionary power on the concerned authorities in cases of discharge and dismissal when an industrial dispute is raised to satisfy itself that the same was legal and proper or not. Mr. Tripathi is justified in his contention that the ambit and scope of power conferred under Section 11-A is very clear and wider. There is no certain fixed yardstick to justify that dismissal is not proper. The authority concerned while exercising its discretionary power under Section 11-A has to bear in mind all the relevant facts and circumstances. The dismissal order was recorded by the responent-authority after holding domestic inquiry against the petitioner which came to be reviewed and reconsidered by the Industrial Tribunal in its exercise of powers under Section 11-A of the IDAct. The Industrial Tribunal thereafter considering the over-all picture emerging from the record of the case, modified the said order and awarded a lumpsum amount of compensation for dismissal,while confirming the delinquency established to the hilt. This exercise of power by the Tribunal in light of provisions of Section 11-A could not be shown to be unjust, perverse, illegal requiring interference of this court in equitable, special, discretionary, prerogative writ jurisdiction wherein the scope is very much circumscribed.

Reliance is placed on a decision of the Honourble apex court in Ved Prakash Gupta vs. Delton Cable India (P) Limited,reported in (1984) 2 SCC 569. In that case, there was charge of abusing a co-worker in filthy language. Extreme penalty of dismissal recorded against the workman was held to be not warranted .It was found that penalty imposed was disproportionately excessive. Therefore, dismissal was set aside and reinstatement in service was ordered with full back wages.

Reliance is also placed on the decision of the Honourable Supreme court in the case of Rama Kant Misra vs.State of U.P. reported in (1982) 3 SCC 346. It was held that the Labour court or Tribunal has jurisdiction or power under Section 11-A to substitute its measure of punishment in place of that awarded by the employer. Dismissal for use of indiscreet,indecent or threatening language only once in the course of unblemish service was held disproportionately excessive. It was fund that there was victimization , and exercising power under Section 11-A, order of dismissal came to be quashed and instead, withholding of two increments with future effect

was held to be proper punishment.

Mr. Tripathi also placed reliance on the decision of the Honourable Supreme court in the case of Workmen vs. Firstone Tyre and Rubber Company,reported in (1973) 1 SCC 813 . Relying on this decision, it is contended that under Section 11-A, the Industrial Tribunal is empowered to reappreciate evidence. It was further contended that the Tribunal should have given cogent reasons for not passing order of reinstatement.

Placing reliance on the very decision, it was contended that the impugned order and award of the Tribunal granting a lumpsum amount of Rs. 50,000/- for dismissal ,without reinstatement is perverse and illegal. This contention cannot be sustained in view of the peculiar facts and circumstances which are herebefore reiterated and in view of the relevant and direct later decision of the Honourable Supreme court rendered in the case of Workmen of Bharat Fritz Werner (P)Ltd. vs. Bharat Fritz Werner (P) Ltd.reported in AIR 1990 SC 1054.

There was a strong proof for holding the petitioner workman guilty of serious misconduct and misbehaviour. Charge of attempting physical assault on the superior in his office by the petitioner who claims to be an office bearer of the union is established to the hilt. It is rightly said that a person who expects others to respect him has to respect others first. A person in charge of the office of a recognized or otherwise a union which is championing cause of labour movement or labour force is obliged to exhibit high order of discipline which is linchpin of industrial peace. A person who is guilty of such a serious misconduct of indiscipline cannot be allowed to be heard that the Industrial Tribunal even while awarding lumpsum amount of Rs,. 50,000/towards compensation for dismissal ,has committed any illegality or perversity. No doubt, the labour force so also the members of the unions of labourers should be respected by the mangement as they are also playing equally important and pivotal role in socio-economic growth not only of the industrial establishments but also of the society at large. At the same time, they are also expected to follow and show discipline decorum and decency befitting of a normal human being if not of an ideal workman

One cannot be allowed to take law in his hand, more so, when he is holding office in a union and to pressurise the management. It is established without any shadow of doubt from the record of the present case that the petitioner on 16.12.1986 in the morning at about 8.40

a.m. had entered into the office of his superior Mr.Kapadia who was working as Assistant Mechanical Engineer at Ahmedabad at the relevant time, and started shouting loudly and indecently and consequently threatened to strangulate him and even physically attempted to do so. But for timely intervention of persons who were present viz. Keshavlal and Kaushik, the petitioner would have been able to accomplish his evil object. When a person like the petitioner who claims to be holding a responsible office in the union is found, without any shadow of doubt, guilty of gross misconduct and misbehaviour and attempted physical assault on his superior, cannot be lightly and leniently viewed . Despite that fact, the Industrial Tribunal took a liberal approach and view and awarded an amount of Rs. 50,000/by way of lumpsum compensation for dismissal which is under challenge in this petition , which has no factual and legal legs to stand. With the result, it merits dismissal at the threshold.

In the aforesaid case of Bharat Fritz Werner (supra),the bench of three Honourable Judges of the Supreme court , after examining and interpreting the provisions of Section 11-A, quashed the order of reinstatement recorded by the High court and awarded compensation of Rs.1,00,000/-. The ratio of the said decision is squarly attracted to the facts of the present case.

In the aforesaid case before the Honourable Supreme court, misconduct was found established against workmen involved in threatening high executive officer with dire consequences and compelling him to withdraw the notice. The said case of misconduct involved acts of subversive of discipline on the part of workmen and some of the workmen were the office bearers of the union. Upon proof of delinquency in the departmental inquiry, dismissal was recorded which was questioned before the High court.

The High court found that acts of misconduct were not such as to warrant dismissal and denial of half of back wages for six years was adequate punishment, exercising its powers conferred under Section 11-A of the ID Act. The management took the matter in civil appeal before the Honourable Supreme court. The Bench of three Honourable Judges reversed the decision of the High court and it was held that reinstatement was bad in view of the serious misconduct of the workmen. Misconduct involving acts of threatening highest executive with dire consequences were not warranting reinstatement.The ratio propounded in the aforesaid decision is squarely attracted to the facts of the present case.

In Punjab National Bank Ltd. vs. Its Workmen ,AIR 1960 SC 160 ,it was held that while passing the order,the Tribunal is expected to be inspired by a sense of fair play towards the employee on the one hand and considerations of discipline in the concern on the other.It must be remembered that reinstatement in a case like the one on hand , serious misconduct and gross misbehaviour in threatening superior and attempting physical assault that too by strangulation cannot be considered either as desirable or expedient. An employee or a workman who is guilty of such gross misconduct and serious misbehaviour indulging in such physical assault on a superior authority and when being one of the office bearers of the union, cannot be heard to contend that reinstatement be given when the master or employer or management has lost confidence. The activity of the petitioner workman was nothing but subversive or prejudicial to the interest of not only to the industrial establishment or employer but to the union to which he belongs in which he is an office bearer.

Having regard to the aforesaid facts and circumstances emerging from the record of the present case and considering the aforesaid relevant proposition of law, this court has no hesitation in finding that the present petition is meritless and there is no fit case to interfere with the discretionary exercise of power by the Industrial Tribunal (which is otherwise found to be liberal and lenient) under Section11-A of the IDAct in awarding a lumpsum amount of Rs. 50,000/- maintaining the order of dismissal , in exercise of special,prerogative, discretionary,equitable writ jurisdiction. With the result, the petition has to be rejected at its threshold. Accordingly, it is rejected.

At this stage, the learned advocate for the petitioner states that the respondent authority may be directed to pay the amount of Rs. 50,000/- as early as possible.. Obviously since the Industrial Tribunal has awarded the amount of Rs. 50,000/- and the respondent- authority has so far not questioned the validity and legality against that, the respondent-authority should comply with the direction contained in the impugned award as early as possible. It will be open for the petitioner to move the appropriate authority by way of representation to pay such amount. It will also be open to him to move the authority for interest in case of unreasonable delay.